

REMARKS/ARGUMENTS

Claim objections

The office objected to claims 62-69 because they all depend on canceled claim 1. The Applicant agrees and has amended claims 62-69 to depend on claim 61.

35 USC 102: Tadauchi

The office rejected claims 61 and 68 under 35 U.S.C. § 102(b) as being anticipated by JP 410113088A to Tadauchi. The rejection has been obviated by amending claim 1 to recite “a blanket sized and dimensioned to lie across the torso of a horse. Tadauchi fails to teach a blanket sized and dimensioned to lie across the torso of a horse, and as such fails to anticipate independent claim 61.

Claim 68 is allowable (among other things) by virtue of its dependency upon allowable claim 61.

35 USC 103: Beeghly/Tadauchi

The office rejected claims 61, 63, 65 and 67 under 35 U.S.C. § 103(a) as being unpatentable over Beeghly (US 5537954) in view of Tadauchi. The applicant disagrees.

In this case, the examiner has failed to set forth a proper showing of *prima facie* obviousness. Instead, the examiner merely stated that since Beeghly teaches an animal sweater having pockets, and Tadauchi teaches a horse harness having freely positionable pockets, that the claimed invention is obvious over the combination of Beeghly and Tadauchi. Without a showing of some teaching, suggestion, or motivation to make the cited combination, the mere conclusory statements of the examiner are insufficient to establish *prima facie* obviousness.

Amended Claim 61 recites a temperature altering system having *inter alia* the following limitations: (1) a blanket sized and dimensioned to lie across a torso of a horse; (2) first and second pockets disposed on an underside of the blanket ...; and (3) each of which is freely positionable about the blanket using hook and loop fasteners. To date, the examiner has failed to identify a reference or proper combination of references that teach, suggest or motivate one of ordinary skill in the art to practice the combination of all of those elements.

Beeghly prevents an animal from being cold, by providing a heated pet sweater having a plurality of fixed pockets disposed on the exterior of the sweater. (Beeghly Spec. C5/L8-16). The crucial point here is that Beeghly's device is a sweater. Since, Beeghly's sweater slips over an animal (as opposed to being draped over an animal) it would be inconvenient at best to have the pockets disposed on an undersurface of the sweater. Access to the pockets would be severely limited, and one of ordinary skill in the art would not have thought to combine the sweater of Beeghly with pockets disposed on an undersurface of the garment.

Still further, there is no indication in Beeghly that the positioning of the pockets is relevant, and therefore no teaching, suggestion, or motivation for one of ordinary skill in the art to use freely positionable pockets. The fact is that when Beeghly's sweater provides its warming function to the back/torso of an animal, there is a lot of area to be covered by the heating pockets. One of ordinary skill in the art would use pockets that are large, and large pockets would tend to only fit properly in predetermined positions. One of ordinary skill in the art would therefore not have contemplated using freely positionable pockets in combination with Beeghly's sweater. Certainly, there is no teaching, suggestion or motivation in Beeghly to use pockets that are freely positionable, let alone freely positionable pockets that are disposed on an undersurface of the device.

Tadauchi device cools a horse's head by providing a head harness having freely positionable pockets on the underside of the harness. (Tadauchi Figure 1). Here, the pockets are small and freely positionable about the interior of the harness, presumably in order to: (1) accommodate different sizes and dimensions of horse heads; (2) decrease the weight of the device in an area (the head) where added weight could be troublesome; and (3) accommodate many different muscles in a small area. There is no teaching, suggestion, or motivation to use Tadauchi's freely positionable pockets for thermo-regulation of the torso, where: (1) a single blanket size can accommodate a wide range of horses; (2) the added weight of thermo-pads would be largely irrelevant; and (3) the muscles are spread out over a large area. One of ordinary skill in the art would consider Tadauchi's freely positionable pockets to be inapplicable to the back/torso of a horse.

Still further, one or ordinary skill would not have thought to modify Beeghly's sweater with Tadauchi's undergarment positioning of pockets because such pockets would be very difficult to access on the sweater.

In sum, there is nothing in the cited prior art that would lead one of ordinary skill in the art to combine Tadauchi and Beeghly, and in fact there is motivation against the cited combination. This is critical, because the examiner has the initial burden to show a teaching, suggestion, or motivation to combine. The burden only shifts to the Applicant once the Examiner's burden has been satisfied. In this case, the examiner failed to meet the initial burden of showing a teaching, suggestion, or motivation to combine Beeghly and Tadauchi. Therefore, the rejections should be withdrawn.

Claims 63, 65 and 67 are allowable (among other things) by virtue of their dependency upon allowable claim 61.

35 USC 103: Beeghly/Tadauchi/Newman

The office rejected claims 62, 66, and 69 under 35 U.S.C. § 103(a) as being unpatentable over Beeghly, as modified by Tadauchi, as applied to claim 61 above, and further in view of Newman (US 5271211). These rejections should be withdrawn because Beeghly and Tadauchi have been improperly combined, the references individually or in combination fail to teach, suggest, or motivate the invention as recited in independent claim 61 as discussed above, and Claims 62, 66, and 69 are allowable by virtue of their dependency upon allowable claim 61.

35 USC 103: Beeghly/Tadauchi/Fazio

The office rejected claim 64 under 35 U.S.C. § 103(a) as being unpatentable over Beeghly as modified by Tadauchi as applied to claim 61 above, and further in view of Fazio (US 6443101). This rejection should also be withdrawn because Beeghly and Tadauchi have been improperly combined, the references individually or in combination fail to teach, suggest, or motivate the invention as recited in independent claim 61 as discussed above, and claim 64 is allowable by virtue of its dependency upon allowable claim 61.

Request For Allowance

Claims 61-69 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
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